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10/599,290	03/25/2008	Si Young Cho	Q97193	6567

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EXAMINER	
SCHMIDTMANN, BAHAR	

ART UNIT	PAPER NUMBER
1623	

NOTIFICATION DATE	DELIVERY MODE
11/23/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@sughrue.com
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Office Action Summary	Application No.	Applicant(s)	
	10/599,290	CHO ET AL.	
	Examiner	Art Unit	
	BAHAR SCHMIDTMANN	1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 October 2011*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

5)☒ Claim(s) *8 and 11* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) *8 and 11* is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

12)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This Office Action is in response to Applicant's Amendment and Remarks filed on 07 October 2011 in which claims 1, 2, 4, 5, 9 and 10 were canceled and claims 8 and 11 were amended to change the scope and breadth of the claims.

Claims 8 and 11 are pending in the current application and are examined on the merits herein.

Withdrawn Objections and Rejections

Applicant's amendment, filed 07 October 2011, with respect to the objection of claims 1, 2, 4, 5 and 11, for a typographical error, has been fully considered and is persuasive because the claims have been canceled.

The objection is hereby **withdrawn**.

Applicant's amendment, filed 07 October 2011, with respect to the rejection of claims 2, 4 and 5 under 35 U.S.C. § 112, second paragraph, for indefiniteness, has been fully considered and is persuasive because the claims have been canceled.

The rejection is hereby **withdrawn**.

Modified Rejections

The following are new ground(s) or modified rejections necessitated by Applicant's amendment, filed on 07 October 2011, where the limitations in pending claims 8 and 10 as amended now have been changed and claims 1, 2, 4, 5, 9 and 10

have been canceled. Therefore, rejections from the previous Office Action, dated 07 July 2011, have been modified and are listed below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoo et al. (EP 1327434: published July 2003; cited in previous Office Action) in view of Ahn et al. (KR10-2003-0075492: published September 2003; machine translation cited in previous Office Action) and Park et al. (KR10-2003-0064986: published August 2003; machine translation cited in previous Office Action) as evidenced by Lee et al. (*J. of Invest. Dermat.*, cited in previous Office Actions)

Yoo et al. teaches a composition comprising 5-25 wt.% ginsenoside F1 (20-O-β-D-glucopyranosyl-20(S)-protopanaxatriol), (claim 3 and abstract) in an admixture of ginseng saponin metabolites. Yoo et al. the ginseng saponin metabolite, i.e. the ginsenoside F1, can be present in an amount of 0.001-30% by weight on the total weight of the overall composition (claim 5). Yoo et al. teaches an example formulation comprising 1.5% by weight ginsenoside F1 (see p.9, table 1, example 3). Yoo et al. also teaches an example formulation comprising 1.5% by weight Bio GF1K (which comprises the ginsenoside F1, see page 7, paragraph 0054 for description of Bio GF1K) with 0.2% by weight α-tocopherol and 0.01% butylated hydroxyl toluene (also known as BHT; see p.9, table 1, example 5). Yoo et al. teaches BHT was added as an antioxidant (p.7, paragraph 0060).

Yoo et al. describes six examples for preparing Bio GF1K, wherein ginsenoside F1 was obtained as an admixture of ginseng saponin metabolites (p.5-7). Yoo et al. teaches in reference example 2, ginsenoside F1 was obtained as 22 percent by weight of the admixture. Therefore, an overall skin care composition comprising 1.5% admixture actually comprises 0.33% by weight ginsenoside F1 based on the weight of the overall composition. A table summarizing these values is provided below.

	Reference Example 2	Reference Example 3	Reference Example 4-1	Reference Example 4-2	Reference Example 4-3	Reference Example 4-4
% by wt. based on wt. admixture	30 mg per 135 mg total admixture = 22%	35 mg per 140 mg total admixture = 25%	150 mg per 730 mg total admixture = 20.5%	100 mg per 352 mg total admixture = 28%	30 mg per 145 mg total admixture = 21%	82 mg per 347 mg total admixture = 24%
% by wt. based on total composition	0.22 * 1.5% = 0.33%	0.25% * 1.5% = 0.38%	0.205 * 1.5% = 0.31%	0.28 * 1.5% = 0.43%	0.21 * 1.5% = 0.31%	0.24 * 1.5% = 0.35%
Ratio of Ginsenoside F1: antioxidant (0.201%)	1.6:1	1.9:1	1.5:1	2.1:1	1.5:1	1.7:1

Yoo et al. teaches the composition is useful in skin-care for anti-aging (claim 15).

Yoo et al. does not expressly disclose (-)epigallocatechin-3-gallate (EGCG) as an anti-oxidant (instant claim 1).

Ahn et al. teaches a cosmetic composition comprising EGCG that inhibits aging of the skin (abstract). Ahn et al. suggests EGCG inhibits oxidation of the skin from oxygen and inhibits peroxide formation (abstract). Ahn et al. teaches a cosmetic composition comprising 0.001 to 20 wt % EGCG (abstract). Ahn et al. teaches EGCG is preferably used in an amount of 0.01 to 5 wt% (p.6 of machine translation, second

paragraph). Ahn et al. also teaches two examples wherein 1 wt.% EGCG is embodied (pp.6-7 of machine translation, testing examples 1 and 2).

Park et al. teaches a cosmetic composition comprising physiologically active compounds (p.2, *Purpose of the invention*, first paragraph). Park et al. teaches the physiologically active compounds include EGCG and ginsenosides (p.4, third paragraph).

It would have been obvious at the time the invention was made to formulate ginsenoside F1 with EGCG at a ratio of 1:0.1-1:10, wherein the amount of ginsensoside F1 and EGCG are incorporated in a combined amount of 0.0001% to 10% by weight.

Based on the teachings of the MPEP and KSR cited in the previous Office Action, by employing the rationale in (A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention; one having ordinary skill in the art would have been motivated to formulate ginsenoside F1 with EGCG at a ratio of 1:0.1-1:10, wherein the amount of ginsensoside F1 and EGCG are incorporated in a combined amount of 0.0001% to 10% by weight.

From Park et al., one having ordinary skill in the art would have known at the time the invention was made that ginsenoside and EGCG can be combined together in the same cosmetic formulation. Additionally, Yoo et al. teaches ginsenosides and antioxidants can be prepared together in the same skin-care composition and Ahn et al.

teaches the antioxidant EGCG can be formulated in cosmetic skin care compositions. Thus, because their combination is expressly taught and suggested by the prior art, it would have been obvious at the time the invention was made to combine them together in a skin care composition.

Because Yoo et al. teaches anti-oxidants can be combined at specific amounts relative to ginsenoside, and because Park teaches ginsenoside combined with EGCG, it would have been obvious at the time the invention was made to combine the teachings of Yoo et al. with Ahn et al. or to substitute the anti-oxidants taught by Yoo et al. with EGCG with a reasonable expectation of producing a skin-care product.

According to MPEP 21440.03: In the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a prima facie case of obviousness exists. In re Wertheim, 541 F.2d 257, 191 USPQ 90 (CCPA 1976)

From Yoo et al., one having ordinary skill in the art would have known at the time the invention was made that ginsenoside F1 can be formulated at 0.001-30% by weight with 0.201% by weight antioxidant (antioxidants are α-tocopherol and BHT). This encompasses a ratio of ginsenoside F1 to EGCG of 1:7, for example 0.04:0.2 (ginsenoside F1 to EGCG), is equivalent to 1:5. Yoo et al. also provides expressed embodiments wherein the range of ginsenoside F1 to EGCG is 1.5:1, and wherein the composition comprises 0.31-0.43% by weight ginsenoside F1 and 0.201% by weight antioxidant based on the total weight of the composition. This provides a combined amount of 0.51-0.63% by weight ginsenoside F1 and antioxidant. Additionally, Ahn et al. teaches EGCG can be formulated in a cosmetic composition at 0.01 to 5% by weight

of the total composition, which is consistent with the amount of antioxidant taught by Yoo et al.

The "wherein" limitations of instant claims 2, 4 and 5 appear to be the inherent properties of ginsenoside F1 as evidenced by Lee et al. Lee et al. teaches ginsenoside F1 protects cells against UVB induced apoptosis by maintaining constant levels of Brn-3a and inhibiting Bcl-2 down regulation (p.607, second column, second paragraph). Lee et al. teaches UVB causes said Bcl-2 down regulation via down regulation of said Brn-3a transcription factor in human HaCaT keratinocytes (p.607, second column, second paragraph). Lee et al. teaches ginsenoside F1 as a useful compound in preventing UVB-induced skin damage (p.612, second column, final paragraph).

Thus, the claimed invention as a whole is *prima facie* obvious over the combined teaching of the prior art.

Response to Arguments

Applicant's arguments filed 07 October 2011 have been fully considered but they are not persuasive.

Applicant contends that none of the references, in combinations, teach or suggest an inhibitor of Rb protein dephosphorylation as defined in claim 8.

The recitation "inhibitor of Rb protein dephosphorylation" in the preamble of instant claim 8 does not result in a structural difference between the claimed invention, i.e. the ginsenoside F1 and EGCG, and the prior art. The claim body describes a structurally complete invention, such that deletion of the preamble phrase does not

affect the structure of the claimed invention. In other words, “inhibitor of Rb protein dephosphorylation” is an intended use of the composition claim, and does not have patentable weight in the instant claim. As such, it is not necessary for the prior art to recognize ginsenoside F1 and EGCG as an "inhibitor of Rb protein dephosphorylation".

Please see MPEP 2111.02, for discussion on effect of preamble. If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention’s limitations, then the preamble is not considered a limitation and is of no significance to claim construction. Pitney Bowes, Inc. v. Hewlett-Packard Co., 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999).

The rejection is hereby **maintained**.

Claims 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yeom et al. (*Cosmetics & Toiletries*, published May 2003, vol. 118, no. 3, pp.77-80 and 82, cited in previous Office Action) and Ahn et al. (cited above) in view of Park et al. (cited above) as evidenced by Lee et al. (cited above).

Yeom et al. teaches hydrolyzed ginseng saponins contains high concentration of ginsenoside F1 (p.77, last paragraph). Yeom et al. teaches isolating pure ginsenoside F1 (p.78, last paragraph). Yeom et al. teaches hydrolyzed ginseng saponins contain more than 7% ginsenoside F1 (p.79, first paragraph). Yeom et al. teaches 1% hydrolyzed ginseng saponins increased total collagen synthesis in normal human skin

fibroblasts (p.79, third paragraph). Yeom et al. suggests the composition containing ginsenoside F1 can be used as an anti-wrinkle agent for the skin (p.79, "Anti-Wrinkle Activity on Skin") and as an anti-aging formulation (p.82, last paragraph).

Yeom et al. does not expressly disclose a skin-care composition comprising (-) epigallocatechin-3-gallate, hereafter EGCG (instant claims 1, 4, 5 and 8-11).

Ahn et al. teaches a cosmetic composition comprising EGCG that inhibits aging of the skin (abstract). Ahn et al. suggests EGCG inhibits oxidation of the skin from oxygen and inhibits peroxide formation (abstract). Ahn et al. teaches a cosmetic composition comprising 0.001 to 20 wt % EGCG (abstract). Ahn et al. teaches EGCG is preferably used in an amount of 0.01 to 5 wt% (p.6 of machine translation, second paragraph). Ahn et al. also teaches two examples wherein 1 wt.% EGCG is embodied (pp.6-7 of machine translation, testing examples 1 and 2).

Park et al. teaches a cosmetic composition comprising physiologically active compounds (p.2, *Purpose of the invention*, first paragraph). Park et al. teaches the physiologically active compounds include EGCG and ginsenosides (p.4, third paragraph).

It would have been obvious at the time the invention was made to formulate a skin-care composition comprising ginsenoside F1 and EGCG.

Based on the teachings of the MPEP and KSR cited in the previous Office Action, by employing the rationale in (A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (G) Some teaching, suggestion, or

motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention; one having ordinary skill in the art would have been motivated to formulate a skin-care composition comprising ginsenoside F1 and EGCG.

From Park et al., one having ordinary skill in the art would have known that ginsenosides and EGCG can be combined together as active agents in a cosmetic composition. Additionally, Yeom et al. teaches isolating ginsenoside F1 and found that 1% hydrolyzed ginseng saponin comprising at least 7% of said ginsenoside F1 can be effective in skin care products. This provides a composition that has at least 0.07% by weight ginsenoside F1 based on the total weight of the composition. One having ordinary skill in the art would have also known from Ahn et al. that EGCG can be used as an anti-oxidant in a cosmetic composition at a range of 0.01 to 5 wt.% based on the total weight of the composition.

Because the art expressly suggests ginsenoside and EGCG can be combined together as active ingredients in a skin care composition, and Yeom et al. and Ahn et al. similarly teach ginsenoside F1 and EGCG can be used in skin care compositions, respectively, combining them together into the same formulation would have been obvious at the time the invention was made.

Furthermore, from Yeom et al., one having ordinary skill in the art would have known that at the very least a composition comprising at least 0.07% by weight ginsenoside F1 can be effective in treating the skin. Knowing that skin care products can also comprise 0.01 to 5 wt.% EGCG, one would have known that ginsenoside F1

and EGCG can be formulated in a weight ratio of 1:0.14 - 1:71. Thus, the weight ratio suggested by the combination of Yeom et al. and Ahn et al. overlaps with the instant claims. More specifically, one would have known that 1 wt.% EGCG is expressly embodied and that ginsenoside F1 and EGCG can be formulated in a weight ratio of 1:14. Thus, a person having ordinary skill in the art would have been motivated to utilize more EGCG relative to ginsenoside F1.

"In the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a prima facie case of obviousness exists. In re Wertheim, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); In re Woodruff, 919 F.2d 1575, 16 USPQ2d 1934 (Fed.Cir. 1990)." See MPEP 2144.05, section I.

Furthermore, one would have been motivated to combine both components because not only have they been proven useful on the skin, but the skin is also exposed to oxygen. Thus, one having ordinary skill would predict that a composition comprising both ginsenoside F1 and EGCG would successfully result in protecting the skin as a skin-care formulation.

The "wherein" limitations of instant claims 2, 4 and 5 appear to be the inherent properties of ginsenoside F1 as evidenced by Lee et al. Lee et al. teaches ginsenoside F1 protects cells against UVB induced apoptosis by maintaining constant levels of Brn-3a and inhibiting Bcl-2 down regulation (p.607, second column, second paragraph). Lee et al. teaches UVB causes said Bcl-2 down regulation via down regulation of said Brn-3a transcription factor in human HaCaT keratinocytes (p.607, second column,

second paragraph). Lee et al. teaches ginsenoside F1 as a useful compound in preventing UVB-induced skin damage (p.612, second column, final paragraph).

Thus, the claimed invention as a whole is *prima facie* obvious over the combined teachings of the prior art.

Response to Arguments

Applicant has not submitted any arguments with respect to the rejection of claims 8 and 11 as being unpatentable over Yeom et al. in view of Ahn et al. in view of Park et al. as evidenced by Lee et al.

Applicant should submit an argument under the heading "Remarks" pointing out disagreements with the examiner's contentions. Applicant must also discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them.

The rejection is hereby **maintained**.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

I. Claims 8 and 11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 6 and 7 of copending Application No. **10/586973** in view of Yoo et al. (cited above) and Ahn et al. (cited above).

Although the conflicting claims are not identical, they are not patentably distinct from each other. Claims 6-7 of the '973 application are drawn to a method for inhibiting biosynthesis of gelatinase comprising applying a composition comprising ginsenoside F1 and compound K.

The claims of the '973 application do not expressly disclose EGCG as part of the composition.

Yoo et al. teaches as discussed above.

Ahn et al. teaches as discussed above.

The obviousness rational for formulating a composition at the instantly claimed weight percent and ratios is the same as discussed above.

Thus, claims 8 and 11 are *prima facie* obvious over claims 6 and 7 of the '973 application.

This is a provisional obviousness-type double patenting rejection.

II. Claims 8 and 11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 16 and 18-21 of copending Application No. **11/443271** in view of Yoo et al. (cited above) and Ahn et al. (cited above).

Although the conflicting claims are not identical, they are not patentably distinct from each other. Claims 16 and 18-21 of the '271 application are drawn to a method of combating aging comprising topically applying a nanoemulsion that comprises a ginseng glucoside. Claim 16 of the '271 lists 20-O-β-D-glucopyranosyl-20(S)-protopanaxatriol (i.e. same as ginsenoside F1) as a ginseng glucoside.

The '271 application does not expressly disclose EGCG.

Yoo et al. teaches as discussed above.

Ahn et al. teaches as discussed above.

The obviousness rational for formulating a composition at the instantly claimed weight percent and ratios is the same as discussed above.

Thus, claims 8 and 11 are *prima facie* obvious over claims 16 and 18-21 of the '271 application.

This is a provisional obviousness-type double patenting rejection.

III. Claims 8 and 11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 7-10 of

copending Application No. **12/135,663** in view of Yoo et al. (cited above) and Ahn et al. (cited above).

Although the conflicting claims are not identical, they are not patentably distinct from each other. The claims of the '663 application are drawn to a method of administering a composition comprising ginsenoside F1 to prevent skin-aging or skin cancer.

The claims of the '663 application do not expressly disclose EGCG as part of the composition.

Yoo et al. teaches as discussed above.

Ahn et al. teaches as discussed above.

The obviousness rational for formulating a composition at the instantly claimed weight percent and ratios is the same as discussed above.

Thus, claims 8 and 11 are *prima facie* obvious over claims 7-10 of the '663 application.

This is a provisional obviousness-type double patenting rejection.

IV. Claims 8 and 11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 12-23 of copending Application No. **12/740212** in view of Yoo et al. (cited above) and Ahn et al. (cited above).

The claims of the '212 application are drawn to a cosmetic composition and method of applying to the skin a composition comprising 0.0001-10 wt.% ginsenoside based on the total weight of the composition.

The claims of the '212 application do not expressly disclose EGCG.

Yoo et al. teaches as discussed above.

Ahn et al. teaches as discussed above.

The obviousness rational for formulating a composition at the instantly claimed weight percent and ratios is the same as discussed above.

Thus, claims 8 and 11 are *prima facie* obvious over claims 12-23 of the '212 application.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

Applicant's arguments filed 07 October 2011 have been fully considered but they are not persuasive.

Applicant has requested that the provisional rejections be held in abeyance until patentable subject matter is identified. However, this request cannot be considered, especially in view that no patentable subject matter has yet been identified.

The obviousness double patenting rejections are hereby **maintained**.

Conclusion

In view of the rejections to the pending claims set forth above, no claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BAHAR SCHMIDTMANN whose telephone number is (571)270-1326. The examiner can normally be reached on Mon-Fri 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SHAOJIA ANNA JIANG/
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